

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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February 14, 2002

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GSBCA 15673-RELO

In the Matter of MARION T. SILVA

Marion T. Silva, Rockville, MD, Claimant.

Mary C. Lanham, Chief, Travel Payments Section, Division of Financial Operations, Program Support Center, Department of Health and Human Services, Rockville, MD, appearing for Department of Health and Human Services.

**DANIELS**, Board Judge (Chairman).

After being named the chief administrative law judge of the Department of Health and Human Services (DHHS), Marion T. Silva was directed to move from Albuquerque, New Mexico, to Washington, D.C. She reported for duty in Washington in July 2000.

Judge Silva's household goods were transported by a carrier under contract to the Government and then stored by an agent of that carrier until the judge moved into a home in the Washington area. The goods weighed more than 18,000 pounds, and DHHS charged the judge for what it believes to be the proportion of the carrier's charges associated with weight in excess of 18,000 pounds. Judge Silva contests the agency's assessment of charges.

DHHS is clearly correct in maintaining that Judge Silva is obligated to pay for the part of the shipment which involved household goods weighing more than 18,000 pounds. Under statute, an agency which transfers an employee, in the interest of the Government, to a new duty station, is obligated to pay "the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking his household goods and personal effects not in excess of 18,000 pounds net weight." 5 U.S.C. § 5724(a)(2) (1994). When the employee's goods weigh more than the specified amount, "the total quantity may be shipped on a Government bill of lading, but the employee shall reimburse the Government for the cost of transportation and other charges applicable to the excess weight, computed from the total charges according to the ratio of excess weight to the total weight of the shipment." 41 CFR 302-8.3(b)(5) (2000).

In calculating the proportion of the costs which Judge Silva must pay, DHHS has made a slight error. The contents of the moving van in which the judge's belongings were

transported weighed 25,420 pounds. Of this amount, 560 pounds were professional books and papers. The weight of the judge's household goods is the difference between these two figures – 24,860 pounds. DHHS has determined that Judge Silva is responsible for 27.59 percent of the charges imposed by the carrier. This percentage is 6,860 pounds (the difference between the 24,860 pounds of household goods and the 18,000 pounds for which the Government is responsible) divided by 24,860 pounds. This determination ignores the agency's obligation to pay for the shipment of the employee's professional books and papers as an administrative expense. 41 CFR 302-8.2(b). The agency was responsible for the costs of shipping 18,560 pounds in all. Judge Silva is responsible for only 26.99 percent of the appropriate charges – the 6,860 pounds of excess weight attributable to her household goods divided by the total weight of the shipment, 25,420 pounds.

Determining the correct cost of the shipment to which this percentage should be applied has been difficult, due to the obstinacy of the agency. The carrier presented to DHHS three different invoices for services it performed, as well as two different statements which purport to explain the items included in the invoices. One of those statements contains items and charges which are somewhat different from those on the invoice it supposedly explains. Judge Silva has asked DHHS on several occasions to delineate specifically which charges were properly made and why, and the Board has asked the agency to respond to this request. DHHS, however, has taken the position that "[it] is not responsible for providing [this] information" and confesses that it does not "have the information to calculate costs for shipping household goods." In addition to being rude to its own employee and the Board, this position is irrational. No reasonable consumer pays a bill presented to him or her without ascertaining that the bill is correct. No reasonable agency takes any less care when paying taxpayer money entrusted to it.

For DHHS's sake, as well as for the benefit of other agencies which may find themselves confronted with similar issues in the future, we will take the time here to explain how we expect an agency to evaluate invoices presented to it by household goods carriers. Having performed such an evaluation, an agency should be able to respond readily to questions like those posed here by Judge Silva and the Board.

The rate tender or tariff which governs charges for a shipment is the touchstone against which the carrier's charges and explanations must be assessed. The shipment of Judge Silva's goods was governed by rate tender HGB 415-G. After examining the carrier's invoices and explanations in light of this tender, we conclude that DHHS was obligated to pay the following amounts for the services performed by the carrier itself (for transporting the judge's goods from New Mexico to the Washington, D.C., area), one of the carrier's subcontractors (for third-party services), and the carrier's agent (for storing the goods between the time they arrived in the Washington area and the time they were delivered to the judge's new residence).

#### Shipping charges

1. Line-haul charge for moving 25,420 pounds of household goods 1,818 miles from Judge Silva's previous home in Placitas, New Mexico, to her new home in Rockville, Maryland: \$24,122. The line-haul charge is dependent on the weight of the shipment and the distance between the two points. The invoices show incorrectly that the shipment weighed

29,900 pounds, and one document in the record indicates that the distance was based on an incorrect point of origin (Placitas, Doña Ana County, New Mexico, rather than Placitas, Sandoval County, New Mexico). Nevertheless, the line-haul charge shown in one of the carrier's explanatory statements turns out to have been based on the correct weight and distance. The tender in question establishes a charge of \$22,937 for carriage, over a distance of 1,801 to 1,900 miles, of the first 23,999 pounds shipped. The tender establishes a charge of \$79 for each additional one hundred pounds or fraction thereof. The total quantity shipped, 25,420 pounds, is 1421 pounds, or 14.21 hundred pounds, more than 23,999. The charge for shipping this additional weight is \$79 times fifteen hundred pounds, or \$1,185. The total line-haul charge is \$22,937 plus \$1,185, or \$24,122.

2. Fuel cost surcharge: \$723.66. Under the terms of the tender, the carrier was entitled to a fuel cost price adjustment when the "national U.S. average" price of diesel fuel, as calculated through the Department of Energy's survey of retail on-highway diesel prices, exceeded \$1.136 per gallon. The adjustment varied, depending on the price of diesel fuel. For the period from June 15 to July 14, 2000, when Judge Silva's goods moved, the adjustment factor was three percent. Thus, the carrier was entitled to a fuel surcharge of three percent of the line-haul charge. Three percent of \$24,122 is \$723.66.

3. Additional transportation charge at destination: \$271.99. Under the terms of the tender, the carrier was entitled to be paid \$1.07 per hundred pounds moved to the Washington, D.C., service area. One dollar and seven cents times 254.2 hundred pounds equals \$271.99. The tender does not state whether the additional transportation charge is to be based on the exact weight of the shipment (e.g., 254.2 hundred pounds) or on the weight, rounded up to the next hundred pounds (e.g., 255 hundred pounds) as used in the method specified for calculating line-haul charges. The carrier based its additional transportation at destination charge on the exact weight, so we will use that lower of the two possible figures for the purpose of settling Judge Silva's claim.

4. Container and packing charges: \$10,574.72. The tender contains separate prices for each container used in a shipment, packing the container, and unpacking the container. For example, using a three cubic foot carton results in a charge of \$9.05, packing it results in a charge of \$13.20, and unpacking it results in a charge of \$5.30. The charges for using all the containers involved in Judge Silva's move totaled \$6,612.15, and the charges for packing those containers totaled \$7,918.40. The sum of these numbers is \$14,530.55. The carrier may not recover this amount, however, because the tender establishes a maximum packing and container charge (or "maxpak charge"), and the maximum is less than \$14,530.55. The maximum is \$6,656 for 16,000 pounds shipped plus \$41.60 per additional hundred pounds. For 25,420 pounds, the maximum is \$10,574.72. (For maxpak charges, the tender requires calculations to be based on the exact weight of goods shipped, rather than the weight rounded up to the next hundred pounds.)

5. Unpacking charges: \$799.70. The agency has provided a document which states that certain numbers of various sizes of cartons were unpacked by the movers who delivered Judge Silva's belongings to her new home. The document appears to have been signed by the judge directly under the legend, "The foregoing correctly reflects the unpacking . . . performed." The appropriate charge for unpacking all these cartons is \$1,022.90. Judge Silva is not sure that the signature on the document is hers, and she has submitted a

declaration that based on careful recordkeeping by her and her husband, the movers could not have unpacked as many cartons as are shown on the agency's document. If the movers had unpacked the smaller numbers of cartons noted in Judge Silva's declaration, the appropriate charge for unpacking would have been \$799.70. We find the judge's declaration persuasive evidence that fewer cartons were unpacked by the movers than is asserted on the agency's document. Even if Judge Silva did sign the document, her declaration is more conclusive as to the number of cartons unpacked by the movers. The judge could not have been expected to provide this information earlier, since the agency did not previously explain the basis of the charge asserted. We therefore use \$799.70 as the correct charge for unpacking.<sup>1</sup>

6. Additional services: \$96.10 for an extra pickup and \$68.60 for two "long carries" (for handling freight not adjacent to the vehicle at the origin or destination). Under the tender, the carrier is entitled to be paid \$96.10 for each extra pickup and \$1.75 per hundred pounds for each long carry. (A long carry is a carry of fifty feet (or a fraction thereof) beyond the first carry of one hundred feet between the outside entrance of a single-family house and the carrier's vehicle.) These charges appear on the carrier's first invoice. The explanatory statement for that invoice says that each of two long carries involved 1,960 pounds; \$68.60 is the correct charge for these services.<sup>2</sup>

7. Discount: (\$19,794.66). Atlas Van Lines, Inc., the firm which transported Judge Silva's belongings, agreed to move household goods for the Government for forty-six percent of tender rates. Thus, all of the charges specified above are discounted by fifty-four percent. The total tender charge of \$36,656.77 is reduced by \$19,794.66.

One of the vouchers from Atlas to DHHS includes charges relating to the transportation of an automobile. The agency arranged for the shipment of Judge Silva's privately-owned vehicle, as well as her household goods, in connection with her relocation. An automobile is not a household good. 41 CFR 302-1.4(j)(i). The Federal Travel Regulation contains rules for shipment of automobiles which are separate from those for shipment of household goods. *Id.* pts. 302-8, -10. Notwithstanding the charges on the voucher, the shipment of the privately-owned vehicle is a matter distinct from anything discussed in this opinion.

#### Subcontractor charges

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<sup>1</sup>The tender does not contain a maximum charge for unpacking, as it does for use and packing of containers. Thus, the calculated amount for unpacking is not limited in the way that the calculated amounts for use and packing are.

<sup>2</sup>It is not readily apparent from the carrier's vouchers and explanatory statements why the carrier assessed the charge for the long carries. Consequently, Judge Silva has effectively not had an opportunity to address this charge. The claimant and the agency may continue to discuss the charge. If Judge Silva contests it, and the agency finds her position convincing, the charge (and corresponding discount – see item 7 among shipping charges) should be eliminated from the total amount of which the judge must pay a percentage.

According to its invoices, Atlas paid a third party for performing services relative to this shipment – \$710 for services at the point of origin and \$261 for services at the point of destination. The agency has not provided any documentation or explanation of the services which were involved, and the applicable tender sheds no light on the nature of the charges. Consequently, we are not in a position to assess whether the charges were proper or not. The Board, as a quasi-judicial tribunal, does not conduct independent investigations with regard to cases presented to it. We expect an agency to submit to us "[a]ny . . . information deemed necessary to the Board's review of the claim." Pamela R. Harris, GSBCA 15645-RELO, 01-2 BCA ¶ 31,640 (quoting Rule 403(a)(3) (48 CFR 6104.3(a)(3) (2000)). Without any reason to believe that these charges were incurred for services actually performed, we cannot conclude that the employee should bear a portion of the charges.<sup>3</sup>

#### Storage charges

1. First day of storage: \$1,779.40. The tender provides that when goods are placed in storage, the carrier is to be paid a certain charge for the first day of storage and a vastly lower charge for each additional day. The high charge for the first day evidently compensates the carrier (and its storage agent) for the costs of moving the goods into and ultimately out of the storage facility. The charge for the first day of storage in the Washington, D.C., service area was \$7.00 per hundred pounds at the time Judge Silva moved. Charges for storage are based on the actual weight of goods stored – which is to say that the weight is not rounded up to the next hundred pounds when computing these charges. The charge for storing Judge Silva's goods for one day is seven dollars times 254.2 hundred pounds, or \$1,779.40.

2. Additional days of storage: \$7,961.54. The tender's charge for each additional day of storage is twenty-seven cents per hundred pounds. Judge Silva's goods were in storage for 116 days beyond the day they were placed in the storage facility. Twenty-seven cents times 116 days times 254.2 hundred pounds is \$7,961.54.

3. Cartage: \$5,645. The tender's charge for delivering goods from storage in the Washington area was \$5,300 for the first 23,999 pounds and \$23 for each additional hundred pounds. Judge Silva's goods weighed 1,421 pounds, or 14.21 hundred pounds, more than 23,999. Additional weight charges for cartage, like those for line-haul, are calculated after rounding up weight to the next hundred pounds. At \$23 each, the charge for fifteen hundred pounds of additional weight was \$345. The total charge for carting Judge Silva's goods was \$5,645.

4. Fuel cost surcharge: \$282.25. Under the same tender provision which allows carriers to apply a fuel surcharge to line-haul charges when the price of diesel fuel rises above \$1.136 per gallon, a carrier is entitled to apply a surcharge to cartage charges on goods

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<sup>3</sup>If DHHS is able to provide to Judge Silva documentation regarding the third-party services, and to persuade her that these charges were appropriately incurred, it may add the charges to the base amount against which the judge's obligation is calculated. We note that charges for third-party services are not provided for in the tender and are consequently not subject to a discount.

delivered from storage. At the end of October 2000, when Judge Silva's goods were delivered from storage, the fuel price adjustment factor was five percent. Five percent of the cartage charge of \$5,645 is \$282.25.

5. Discount: (\$5,953.91). Atlas agreed to charge sixty-two percent of tender prices for storage services. The total storage charges listed above are \$15,668.19. The discount on this amount is thirty-eight percent, or \$5,953.91.

We have determined that the total charges for shipping and storing Judge Silva's household goods are \$26,576.39 – \$16,862.11 for shipping and \$9,714.28 for storage. Of this amount, the judge is obligated to pay 26.99 percent, or \$7,172.97. This amount is \$456.94 less than the sum asserted by DHHS, \$7,629.91.

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STEPHEN M. DANIELS  
Board Judge